

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE, *et al.*, on behalf
of themselves and others similarly situated,

Plaintiffs,

v.

JOSEPH R. BIDEN, President of the
United States, *et al.*,

Defendants.

No. 2:17-cv-00094-RAJ

**PLAINTIFFS' MOTION TO SEAL
PLAINTIFFS' MOTION TO EXCLUDE
OPINIONS OF BERNARD SISKIN**

NOTE FOR MOTION CALENDAR:
April 9, 2021

I. INTRODUCTION

Pursuant to Local Rule 5(g), Plaintiffs respectfully move for leave to keep under seal Plaintiffs' Motion to Exclude Opinions of Bernard Siskin and its supporting documents. On March 25, 2021, Plaintiffs filed a Motion to Exclude Opinions of Bernard Siskin (the "Motion to Exclude"). In support of that motion, Plaintiffs filed the Declaration of Hugh Handeyside ("Handeyside Declaration"), Exhibits A–F, and a Proposed Order. The exhibits include documents produced to Plaintiffs under the protective orders in this case (Dkts. 86, 183, 192), and the Motion to Exclude includes information from those documents.

II. CERTIFICATION

Pursuant to LCR 5(g)(3)(A), Plaintiffs certify that the parties met and conferred telephonically regarding this motion on March 22, 2021. Jesse Busen, Victoria Braga, Brian Kipnis, Anne Donohue, Lindsay Murphy, and Leon Taranto participated on behalf of Defendants

1 and Heath Hyatt and Hugh Handeyside participated on behalf of the Plaintiffs. The same day,
 2 counsel for Defendants confirmed by email that the confidentiality designations they had made
 3 to the transcript of Dr. Siskin's deposition were correct.¹

4 Plaintiffs relied on Defendants' confidentiality designations in drafting the Motion to
 5 Exclude and preparing a redacted version of same for public filing.

6 **III. ARGUMENT**

7 Plaintiffs move to seal the Motion to Exclude and Exhibits A–F to the Handeyside
 8 Declaration. Defendants maintain the protective order designations of these documents and
 9 information. Defendants will presumably file a statement explaining why this material should
 10 remain under seal as required by LCR 5(g). *See* LCR 5(g)(3) (“the party who designated the
 11 document confidential must satisfy subpart (3)(B) in its response to the motion to seal or in a
 12 stipulated motion”).

13 Notably, Plaintiffs' proposed redactions include information that Defendants have *not*
 14 designated confidential under the protective orders. On March 25, well beyond the eleventh hour,
 15 Defendants requested by email that Plaintiffs move to provisionally file the entire contents of the
 16 Motion to Exclude under seal, so as to enable the government to conduct further review of
 17 Plaintiffs' redactions. The Local Rules contain no provision for filing the entire contents of a
 18 motion under seal, even provisionally; on the contrary, “A party must minimize the number of
 19 documents it files under seal and the length of each document it files under seal.” LCR 5(g)(4).
 20 Nevertheless, Plaintiffs have attempted to honor Defendants' request by redacting not only
 21 material that Defendants have designated confidential under the protective orders, but material
 22 that quotes—or relies on—portions of Dr. Siskin's deposition testimony that Defendants
 23 confirmed were *not* confidential. To be clear, Plaintiffs maintain that any portions of Dr. Siskin's
 24 deposition testimony not previously designated confidential under the protective orders should
 25 not be sealed.

26
 27
 28 ¹ Defendants relayed their confidentiality designations to Plaintiffs on December 10, 2020.

Respectfully submitted,

DATED: March 25, 2021

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